Lembaga Kumpulan Wang Simpanan Pekerja v Edwin Cassian a/l Nagappan @ Marie

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 03–3–10 OF 2019(W)
ROHANA YUSUF PCA, AZAHAR MOHAMED CJ (MALAYA) AND NALLINI PATHMANATHAN FCJ
19 JULY 2021

Civil Procedure — Consent judgment — Liability of payment — Joint and several liability — Judgment did not include phrase 'jointly and severally' liable for judgment sum — Whether court should give effect to liability on 'joint and several' basis in situation where words 'joint and several' were not specifically stated in court judgment — Contracts Act 1950 s 44 — Employees Provident Fund Act 1991 s 46

The Employees' Provident Fund Board ('the Board') filed a sessions court suit against a company, Fix Interior Collections Sdn Bhd ('the company') and its directors, two siblings named Edwin Cassian a/l Nagappan @ Marie ('Edwin') and Bernard John a/l Nagappan @ Marie Alphonso Michael, premised on the company's failure to make employer contributions on behalf of its employees. The parties recorded a consent judgment where each of the three defendants agreed to pay the Board the arrears amounting to RM133,697 together with dividends and interest as well as legal fees of RM800. The subject of contention in the subsequent enforcement proceedings was that the consent judgment did not include the phrase that the defendants would be 'jointly and severally' liable for the judgment sum. The defendants failed to comply with the terms of the consent judgment as they only made part-payment, leaving an outstanding balance of RM90,857 with dividends and interest. The Board then issued a bankruptcy notice and presented the creditor's petition against Edwin alone by way of substituted service. Subsequently, Edwin applied to set aside the bankruptcy notice and the creditor's petition. The Senior Assistant Registrar of the High Court allowed the application to set aside both the bankruptcy and the creditor's petition. Dissatisfied, the Board appealed to the judge in chambers. The Board's appeal was dismissed by the judge of the High Court. The Board's appeal to the Court of Appeal was similarly unsuccessful and was dismissed. The Board's application for leave to appeal to the Federal Court was granted on this sole question of law: whether the court should give effect to the liability on a 'joint and several' basis as provided under s 46 of the Employees Provident Fund Act 1991 in a situation where the words 'joint and several' were not specifically stated in the court judgment.

Held, allowing the appeal with no order as to costs:

(1) The reading by the Court of Appeal of the judgment in this case was flawed by reason of its misapprehension of the term 'joint liability'. The courts below erred in law in invoking the presumption that joint liability meant liability for only half the debt and not the full amount. The promisee, ie the Board, was entitled to proceed against one promisor, or the other, or both, in order to procure full performance as was evident from s 44 of the Contracts Act 1950. Furthermore, there was a notable absence of terms creating 'joint' liability in the judgment itself. Merely inserting the word 'jointly' in the consent judgment would not suffice to halve liability as there must be express words to that effect to state that the liability of the joint promisors was to be borne in equal proportions. In the circumstances, liability under the consent judgment must necessarily be both joint and several (see paras 37 & 39–40).

[Bahasa Malaysia summary

Lembaga Kumpulan Wang Simpanan Pekerja ('Lembaga') memfailkan tuntutan mahkamah sesyen terhadap sebuah syarikat, Fix Interior Collections Sdn Bhd ('syarikat') dan pengarahnya, dua beradik bernama Edwin Cassian a/l Nagappan @ Marie ('Edwin') dan Bernard John a/l Nagappan @ Marie Alphonso Michael, berdasarkan kegagalan syarikat membuat sumbangan majikan bagi pihak pekerjanya. Pihak-pihak mencatatkan penghakiman persetujuan di mana ketiga-tiga defendan masing-masing bersetuju untuk membayar tunggakan kepada Lembaga berjumlah RM133,697 berserta dividen dan faedah serta yuran guaman sebanyak RM800. Subjek pertikaian dalam prosiding penguatkuasaan berikutnya adalah bahawa penghakiman persetujuan tidak termasuk frasa bahawa defendan akan 'bersama dan berasingan' bertanggungjawab atas jumlah penghakiman tersebut. Defendan tidak mematuhi syarat-syarat penghakiman persetujuan kerana mereka hanya membuat pembayaran separuh, meninggalkan baki tertunggak berjumlah RM90,857 dengan dividen dan faedah. Lembaga kemudian mengeluarkan notis kebankrapan dan mengemukakan petisyen pemiutang terhadap Edwin sahaja melalui serahan ganti. Selepas itu, Edwin memohon untuk mengetepikan notis kebankrapan dan petisyen pemiutang. Penolong Kanan Pendaftar Mahkamah Tinggi membenarkan permohonan itu untuk mengetepikan petisyen kebankrapan dan pemiutang. Tidak berpuas hati, Lembaga merayu kepada hakim dalam kamar. Rayuan Lembaga ditolak oleh hakim Mahkamah Tinggi. Rayuan Lembaga ke Mahkamah Rayuan juga tidak berhasil dan ditolak. Permohonan Lembaga untuk kebenaran untuk merayu ke Mahkamah Persekutuan dibenarkan atas persoalan undang-undang ini: sama ada mahkamah harus memberi kesan kepada tanggungjawab secara 'bersama dan berasingan' seperti yang diperuntukkan di bawah s 46 Akta Kumpulan Wang Simpanan Pekerja 1991 dalam situasi di mana perkataan 'bersama dan berasingan' tidak dinyatakan secara khusus dalam penghakiman mahkamah.

Diputuskan, membenarkan rayuan tanpa perintah kos:

(1) Pembacaan penghakiman oleh Mahkamah Rayuan dalam kes ini adalah salah kerana salah faham mengenai istilah 'tanggungjawab bersama'. Mahkamah bawahan terkhilaf dalam undang-undang dengan menggunakan anggapan bahawa tanggungjawab bersama bermaksud tanggungjawab hanya separuh hutang dan bukan jumlah keseluruhan. Penerima janji, iaitu Lembaga, berhak untuk meneruskan terhadap seorang pembuat janji, atau yang lain, atau kedua-duanya, untuk mendapatkan pelaksanaan penuh seperti yang terbukti dari s 44 Akta Kontrak 1950. Selain itu, terdapat ketiadaan istilah yang mewujudkan tanggungjawab 'bersama' dalam penghakiman itu sendiri. Dengan hanya memasukkan perkataan 'bersama' dalam penghakiman persetujuan tidak akan cukup untuk mengurangkan separuh tanggungjawab kerana mesti ada kata-kata yang jelas untuk menyatakan bahawa tanggungjawab pembuat janji bersama harus ditanggung dalam kadar yang sama. Dalam keadaan itu, tanggungjawab di bawah penghakiman persetujuan mestilah bersama dan berasingan (lihat perenggan 37 & 39–40).]

Cases referred to

Balgobin v South West Regional Health Authority and another [2012] UKPC 11; [2013] 1 AC 582, PC (refd)

Blyth v Fladgate [1891] 1 Ch 337, Ch D (refd)

Dhanki Mahajan vs Rana Chandubha Wakhatsing & Ors 1969 AIR 69, SC (refd)

Drake v Mitchell and others [1803–13] All ER Rep 541 (refd)

Kejuruteraan Bintai Kindenko Sdn Bhd v Fong Soon Leong [2021] 2 MLJ 234, CA (folld)

Kendall v Hamilton (1879) 4 App Cas 504, HL (refd)

King v Hoare (1844) 13 M & W 494 (refd)

Lechmere v Fletcher (1833) 1 Cr & M 623 (refd)

Sumathy a/p Subramaniam v Subramaniam a/l Gunasegaran and another appeal [2017] 6 MLJ 753, CA (refd)

Tang Man Sit (decd) (personal representative) v Capacious Investments Ltd [1996] AC 514, PC (refd)

Union of India v East Bengal River Steamer Service Limited 1963 Indlaw CAL 177; AIR 1964 Cal 196, HC (refd)

Vallibhai Adamji, In Re (1933) 35 BOMLR 881; 1933 Indlaw MUM 179 (refd)

Young v Bristol Aeroplane Co, Limited [1944] KB 718, CA (refd)

Legislation referred to

Contracts Act 1950 s 44, 44(1), (2)

Contract Act 1872 [IN] s 43

Employees Provident Fund Act 1991 s 46

Appeal from: Civil Appeal No W-03(IM)(NCC)-97–08 of 2018) (Court of Appeal, Putrajaya)

Afifil Ahmad (Nabila Rosli with him) (Azrul Afifi & Azuan) for the appellant. (Not present) for the respondent.

Nallini Pathmanathan FCJ:

INTRODUCTION

[1] The issue before the Federal Court turned on what is meant by 'joint liability' as opposed to 'joint and several liability'. In the instant appeal, judgement was obtained against the Appellant here, and one other, premised on their personal liability as directors for the failure of the employer company to make Employment Provident Fund payments to its employees. The order of the High Court, the court of first instance, did not expressly specify the type of liability imposed upon two debtors, one of whom is the appellant. The provisions of the Employees Provident Fund Act, more particularly s 46, expressly provides for the joint and several liability of directors of an employer company, where there is a failure to make the requisite employer's contribu tion.

[2] The issue before the courts below was the nature of the liability against each of the two debtors, given that the order of the trial court adjudging liability against them did not expressly specify whether each debtor was liable for the full quantum or not. Both the courts below were of the view that the failure to include the phrase 'jointly and severally' in a court order would mean that each defendant would be only liable for a portion of the judgment sum, proportionate to his share/interest/obligation.

[3] We reversed the decisions of the courts below and now give our reasons for doing so.

Salient facts

[4] The Employees' Provident Fund Board ('the Board') filed a sessions court suit against a company, Fix Interior Collections Sdn Bhd ('the company') and its directors, two siblings named Edwin Cassian a/l Nagappan @ Marie ('Edwin') and Bernard John a/l Nagappan @ Marie Alphonso Michael, premised on the company's failure to make employer contributions on behalf of its employees.

[5] The parties recorded a consent judgment dated 24 April 2013, where each of the three defendants agreed to pay the Board the arrears amounting to RM133,697 for the period from October 2010 until January 2012 in 24

instalments, together with dividends and interest as well as legal fees of RM800. The subject of contention in the subsequent enforcement proceedings was that the consent judgment did not include the phrase that the defendants would be 'jointly and severally' liable for the judgment sum.

[6] The defendants failed to comply with the terms of the consent judgment as they only made part-payment, leaving an outstanding balance of RM90,857 with dividends and interest.

[7] The Board then issued a bankruptcy notice against Edwin alone. It was served by way of substituted service. Likewise, the creditor's petition which the Board presented against Edwin was also served by way of substituted service.

The High Court

[8] Subsequently, Edwin applied to set aside the bankruptcy notice and the creditor's petition. The senior assistant registrar of the High Court allowed the application to set aside both the bankruptcy and the creditor's petition. Dissatisfied, the Board appealed to the judge in chambers. The Board's appeal was dismissed by the judge of the High Court.

[9] The High Court judge affirmed the decision of the Senior Assistant Registrar which relied on the Court of Appeal case of *Sumathy a/p Subramaniam v Subramaniam a/l Gunasegaran and another appeal* [2017] 6 MLJ 753 ('Sumathy') which held that in a case where bankruptcy proceedings were initiated simultaneously against two judgment debtors, they could not both be held liable for the whole judgment sum.

[10] The High Court therefore ordered them to pay the sum in equal proportions, stating that it was bound by *Sumathy*. It further held that if the words 'jointly and severally' liable were not inserted into the consent judgment, the court cannot look behind the judgment.

The Court of Appeal

[11] The Board's appeal to the Court of Appeal was similarly unsuccessful and was dismissed on 29 April 2019. The Board contended before the Court of Appeal that its action against Edwin was filed pursuant to s 46 of the Employees Provident Fund Act 1991 ('the EPF Act') which provides as follows:

> 46 Joint and several liability of directors, etc
>
> (1) *Where any contributions remaining unpaid by a company*, a firm or an association of persons, then, notwithstanding anything to the contrary in this Act or any other written law, the directors of such company including any persons who were directors of such company during such period in which contributions were liable to

> be paid, or the partners of such firm, including any persons who were partners of such firm during such period in which contributions were liable to be paid, or the office-bearers of such association of persons, including any persons who were office-bearers of such association during such period in which contributions were liable to be paid, as the case may be, *shall together with the company*, firm or association of persons liable to pay the said contributions, *be jointly and severally liable for the contributions due and payable to the Fund*. (Emphasis added.)

[12] The Board's reliance on s 46 of the EPF Act to urge the court to read in the words 'jointly and severally' into the consent judgment was not accepted by the Court of Appeal, despite the express statutory provisions of the Act imposing joint and several liability. The Court of Appeal agreed with the High Court that the case of *Sumathy* was applicable to the present facts and went on to hold that it could not import into the enforcement or bankruptcy order, the phrase 'joint and several'.

[13] The reason given by the Court of Appeal was the fact of the consent judgment between the Board and the directors, which it held to be a contract binding the parties. The Court of Appeal then went on to hold, erroneously, that the bankruptcy notice and the creditor's petition were defective because these papers claimed for the whole judgment sum instead of only the portion owed by Edwin. In short, the Court of Appeal was of the considered view that the liability of each of the two directors was only half of the debt owed to the Board.

The Federal Court

[14] The Board applied for leave to appeal to the Federal Court. Leave was granted on this sole question of law:

> Whether this Court should give effect to the liability on a 'joint and several' basis as provided under section 46 of the Employees Provident Fund Act 1991 in a situation where the words 'joint and several' were not specifically stated in the court judgment.

[15] At the end of the hearing before us, we determined, unanimously that the question of law is to be answered in the affirmative. We append below our reasons for so concluding.

OUR ANALYSIS AND DECISION

The law: Joint, several, and joint and several liability — General principles

[16] *Joint liability* arises when two or more persons jointly promise to do the same thing. There is only *one obligation or promise,* and consequently,

A performance by one person discharges the others. In the case of a joint promise, the obligation is single and entire. It is extinguished by a judgment and decree in a suit against any one of the joint promisors: *In Re Vallibhai Adamji* (1933) 35 BOMLR 881; 1933 Indlaw MUM 179.

B **[17]** *Several liability*, on the other hand, arises when *two or more persons make separate promises to another,* whether by the same instrument or by different instruments. There is more than one obligation or promise, as compared to joint liability where there is one obligation or promise.

C **[18]** A joint and several promise is different from a joint promise. Joint and several liability arises when two or more persons in the same instrument jointly promise to do the same thing and also severally make separate promises to do the same thing. Joint and several liability gives rise to one joint obligation and to as many several obligations as there are joint and several promisors: *In Re Vallibhai Adamji.*

[19] It is like joint liability in that the co-promisors are not cumulatively liable, so that performance by one discharges all; but it is free from most of the E technical rules governing joint liability: see Burrows, Andrew, *Joint Obligations*, *Chitty on Contracts: Volume 1, General Principles* (33rd Ed, London: Thomson Reuters, 2018), 1391–1403 at p 1391.

[20] In all these instances, the promisor who has discharged the liability may F then seek a proportionate share from each of the other debtors. The creditor however is at liberty to go against any one or all of the debtors.

The position at common law

G **[21]** At common law, it used to be that a judgment recovered against one or more of a number of joint debtors precludes an action against the others: see *King v Hoare* (1844) 13 M & W 494, *Kendall v Hamilton* (1879) 4 App Cas 504 (HL). This is due to the doctrine of merger or upon the rule that joint debtors have the right to be sued together: see *Halsbury's Laws of England* (4th H Ed) Vol 9, 1974, Contract, '9. Joint and Several Promises' at para 624. Because the rule resulted in hardship to the creditor, it was aboli shed by statute in the United Kingdom, with the consequence that a creditor is no longer precluded from suing one joint debtor merely because he has previously obtained a judgment against another: see Peel, Edwin, *Trietel: The Law of Contract* (14th I Ed, Great Britain: Sweet & Maxwell, 2015), para 13–007.

[22] However, when liability is joint and several, a judgment against one debtor does not, even at common law, bar a several action against another: *Lechmere v Fletcher* (1833) 1 Cr & M 623, *King v Hoare* (1844) 13 M & W 494

at p 505, *Blyth v Fladgate* [1891] 1 Ch 337 at p 353, *Balgobin v South West Regional Health Authority and another* [2012] UKPC 11; [2013] 1 AC 582 at para [21], *Halsbury's Laws of England* (5th Ed, Vol 22, 2012) Contract, '9. Joint Promises' at para 648. A claim against joint and several debtors is barred only if one of them satisfies it, whether under a judgment or otherwise: see Peel, Edwin, *Trietel: The Law of Contract* (14th Ed, Great Britain: Sweet & Maxwell, 2015), at para 13–008. This rule was rationalised by Lord Ellenborough in *Drake v Mitchell and others* [1803–13] All ER Rep 541 at p 542 as follows:

> ... a judgment recovered in any form of action is still but a security for the original cause of action, until it be made productive in satisfaction to the party, and, therefore, till then it cannot operate to change any other collateral concurrent remedy which the party may have.

[23] It is pertinent to note that even under the old common law position, there was no indication that in a joint liability situation, the liability of two or more debtors is shared. That is a misconception of the meaning of joint liability.

The position in Malaysia

[24] In this jurisdiction in any event, the common law is inapplicable, as we are governed by the Contracts Act 1950. Section 44 of the Contracts Act 1950 (Act 136) ('the Contracts Act') is the relevant provision relating to joint liability. It states:

> (1) When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel *any one* or more of the joint promisors to *perform the whole* of the promise. (Emphasis added.)

[25] Section 44 of the Contracts Act is *in pari materia* with s 43 of the Indian Contract Act 1872. *In Re Vallibhai Adamji*, BJ Wadia observed that the provision:

> ... makes the liability on all contracts joint and several, and allows the promisee to sue one or more of the several joint promisors as he chooses, and excludes the right of any one of them to be sued along with his co-promisor or co-promisors.

(See also: *Union of India v East Bengal River Steamer Service Limited* 1963 Indlaw CAL 177; AIR 1964 Cal 196.)

[26] In summary therefore, unless a contrary intention is expressed in the contract, all joint contracts effectively impose a full liability for the debt on each of the promisors, by virtue of s 43 of the Indian Contract Act 1872: see *Pollock & Mulla: Indian Contract and Specific Relief Acts*, Vol 1 (13th Ed, India: LexisNexis, 2009) at pp 1043–1044. Thus, where the debts are jointly incurred, *each* promisee is liable for the *whole* amount: *Dhanki Mahajan vs*

Rana Chandubha Wakhatsing & Ors 1969 AIR 69.

[27] Accordingly, so long as a judgment debt remains unrealised, the judgment creditor is entitled to proceed against one or any number of judgment debtors to secure the performance of an obligation in its entirety.

[28] The issue that possibly gives rise to confusion is s 44(2) of the Contracts Act 1950 which allows the promisor who has paid the full promised amount to claim contribution from the joint promisor for an equal contribution. This means that the liability for the full promised sum is shared equally between all the promisors. However that is between the promisors, inter-se. It does not affect the rights of the creditor which are governed by s 44(1) of the Contracts Act 1950.

[29] This brings us to the underlying rationale for joint liability as opposed to joint and several liability. *Each of these doctrines relates to the number of promises made, and not the number of promisors who made a particular promise. In the case of joint liability, there is one promise and two or more promisors.* Each is liable to the extent of the promised amount. *In the case of a joint and several liability, there is more than one promise.* The promisors make two or more promises and thus several liability arises.

CONCLUSION

[30] In summary, even in the United Kingdom where there is a judgment premised on a joint liability, the creditor is at liberty to go against one, or the other or both. In respect of the present appeal, the position is even clearer in this jurisdiction because we are governed by s 44 of the Contracts Act 1950 *which statutorily provides that the creditor may proceed against one or both of the joint promisors.*

The Court of Appeal decision in Sumathy

[31] As stated earlier, the courts below regarded themselves bound by the earlier Court of Appeal decision in *Sumathy*. In *Sumathy*, the creditor sued the principal borrower and the guarantor for monies outstanding under a friendly loan. Summary judgment was entered against both defendants, on the same terms, but the judgment did not state whether the liability of the parties was joint or several. Subsequently, two separate bankruptcy notices were filed at the same time against the principal borrower and the guarantor, both specifying the judgment debt of RM291,800.

[32] The Court of Appeal held at para 19 of the judgment that a plaintiff who becomes a judgment creditor where the liability is joint, is only entitled to

seek recovery in equal proportions against each of the defendants. This premise is, with respect, flawed because it pre-supposes that liability is proportionate to the number of promisors, from the perspective of the creditor. In *Sumathy*, the position of the creditor was conflated with the position of the debtors or promisors inter se, as we have explained above.

[33] We would also respectfully point out that the doctrine of merger has no application in the issue of whether or not the enforcement court can look behind the judgement. Merger comes into play when the cause of action is sought to be revisited against the same parties.

The Court of Appeal decision in Kejuruteraan Bintai Kindenko

[34] In *Kejuruteraan Bintai Kindenko Sdn Bhd v Fong Soon Leong* [2021] 2 MLJ 234, costs of RM50,000 was awarded to Kejuruteraan Bintai Kindenko (KBK) against Fong and four other petitioners. KBK then commenced bankruptcy proceedings against Fong as the costs of RM50,000 was never paid. Fong challenged the bankruptcy notice on the ground that he was not indebted to the sum of RM50,000. This contention found favour with the High Court.

[35] KBK then appealed to the Court of Appeal. The Court of Appeal, speaking through Justice Darryl Goon, in a meticulous and comprehensive judgment examining a long line of cases, concluded that it differed in reasoning with *Sumathy.* However, the Court of Appeal was constrained to dismiss the appeal as it regarded itself bound by the decision in *Sumathy* based on the rule of stare decisis as enunciated in *Young v Bristol Aeroplane Co, Limited* [1944] KB 718. We would, with respect concur with the reasoning in *Kejuruteraan Bintai Kindenko Sdn Bhd v Fong Soon Leong* [2021] 2 MLJ 234.

The EPF Act

[36] The instant appeal concerns a consent judgment entered into between the parties. Of primary importance is s 46 of the EPF Act which imposes joint and several liability on the directors of a company for unpaid contributions. These provisions must be given full effect, as they comprise statutory law. It is not open to the courts to stultify, vary or whittle down the clear provisions promulgated by Parliament in relation to liability for EPF contributions, by construing judgments in manner which is not consonant with the EPF Act. In short, the EPF Act prevails over the terms of the judgment.

[37] In any event, we reiterate that the reading by the Court of Appeal of the judgment in the instant case was flawed by reason of its misapprehension of the term 'joint liability' as explained above.

[38] Finally, s 44 of the Act is also relevant by virtue of our discussion above. It is manifestly clear that the liability of the judgment debtors in the present appeal is both joint and several by operation of law.

[39] In our considered opinion, the courts below erred in law in invoking the presumption that joint liability means liability for only half the debt and not the full amount. As mentioned earlier, joint and several liability gives rise to one joint obligation and to as many several obligations as there are joint and several promises. The promisee, ie the Board, is therefore entitled to proceed against one promisor, or the other, or both, in order to procure full performance as is evident from s 44 of the Act.

[40] Furthermore, there is a notable absence of terms creating 'joint' liability in the judgment itself. Even if such a term had been inserted that would not entitle the courts to conclude that liability is somehow halved between the two obligors or promisors. Given the prevailing interpretation of s 44 of the Act, merely inserting the word 'jointly' in the consent judgment would not suffice to halve liability as there must be express words to that effect to state that the liability of the joint promisors is to be borne in equal proportions. Moreover, such halved liability should take root from the original promise whereby the liability of a promisor for a debt owed to a creditor is expressly stated to be only half of the debt. If we are to accept the premise that 'joint and several liability' cannot be read into the judgment due to an absence of such words, it similarly follows that a silent judgment cannot automatically be inferred to impose 'joint' liability where there is no such mention. This is especially so when the liability that arises is explicitly stipulated by statute. In the circumstances, liability under the consent judgment must necessarily be both joint and several in light of our discussion above.

[41] One final point remains to be made. The Court of Appeal in *Sumathy* was concerned that the judgment creditor would be 'very much overpaid' if both defendants were to be liable for the amounts in the bankruptcy notices. To address this, guidance can be gleaned from *Tang Man Sit (decd) (personal representative) v Capacious Investments Ltd* [1996] AC 514, where Lord Nicholls of Birkenhead delivering the Privy Council judgment at p 522 said that:

> ... a plaintiff cannot recover in the aggregate from one or more defendants an amount in excess of his loss. Part satisfaction of a judgment against one person does not operate as a bar to the plaintiff thereafter bringing an action against another who is also liable, but it does operate to reduce the amount recoverable in the second action. However, once a plaintiff has fully recouped his loss, of necessity he cannot thereafter pursue any other remedy he might have and which he might have pursued earlier. Having recouped the whole of his loss, any further proceedings would lack a subject matter. This principle of full satisfaction prevents double recovery.

CONCLUSION

[42] We unanimously allowed the appeal with no order as to costs. We answered the question of law in the affirmative for the reasons above. The matter is remitted to the High Court.

Appeal allowed with no order as to costs.

Reported by Ahmad Ismail Illman Mohd Razali